IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
Court No. 3

Criminal Misc. Application No. 256/2003
Mohammad Shahjad and others …… Applicants.

Versus
State of Uttaranchal and another ……. Respondents.

Hon'ble Irshad Hussain, J.

This is a petition under section 482 of the Code of Criminal Procedure against the order dated 5.3.2002 passed by Assistant Sessions Judge in sessions trial No. 276 of 1998 State Vs. Sahjad and others as well as the order dated 17-9-2003 passed by the learned Sessions Judge Haridwar in criminal revision against the said order.

2- Heard Sri Arvind Vashistha learned counsel for the applicants and learned AGA and perused the record.

3- The facts are that on 5.3.2002 prosecution witness Gayoor was recalled for recording this evidence on the request of the defence. His statement on oath was recorded in the trial. However, the said witness did not sign the statement and refused to sign o the plea that he had given the statement on 25.4.2001 under the influence of the police. The learned Assistant Sessions Judge passed an order on the same day i.e. on 5.3.2002 that the witness has not singed his statement and the same can not be read in evidence in the trial. The observation made is against law because the certificate of the learned Sessions Judge is there on the statement that the statement of the witness was recorded on oath and certificate to this effect was appended on the statement the same day i.e. on 5.3.2002. It was however open to the learned Assistant Sessions Judge to consider the demeanour the entire evidence of the witness in the trial and considering the impropriety the order of the learned Assistant Sessions Judge to the above effect need to set aside.

4- The petition is allowed and the observation and order of the Assistant Sessions Judge that the evidence of witness Gayoor recorded on 5.3.2002 shall not be considered in evidence is set aside. The learned Sessions Judge shall however consider the entire evidence of the witness while deciding the case on merit.

5-The petition is disposed of accordingly.

(Irshad Hussain, J.)

Dated: 31-10-03
ISB